IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4641 OF 2004

Shri Raghunath Dnyanu Sankpal ... Petitioner

V/s

Shri Digambar Hanmantrao Jadhav & ors. ... Respondents

Mr. N.V. Bandiwadekar for the petitioner.

Mr. A.A. Kukbhakoni for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 21ST FEBRUARY, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. This petition is preferred by the petitioner tenant against the order passed by the Addl. District Judge, Kolhapur, dated 18.3.2004 dismissing his appeal and confirming the judgment and order passed by the Trial Court dated 20.3.2002 decreeing the plaintiffs' suit under Sec.13(1)(l) of the Bombay Rent Act with prayer to vacate the suit premises.

3. The plaintiffs/respondents filed the suit in the Trial Court praying for decree of vacation under Sec. 13(1)(g) as well as 13(1)(l) of the Bombay Rent Act on the ground that the suit premises was required reasonably and bonafide for his personal use and occupation and that the petitioner tenant had acquired the suitable residential accommodation and, therefore, he was not in need of the said premises.

The defendant contested the suit denying the plaintiffs' allegations and sought dismissal of the suit.

The Trial Court adjudicated the dispute on merits and came to the conclusion that the plaintiffs did not prove the requirement as contemplated under Sec. 31(1)(g) of the Bombay Rent Act. It was proved that the defendant had acquired suitable alternative accommodation and, as such, the plaintiffs were entitled to possession of the suit property and decree came to be passed accordingly.

The appeal was carried to the District Judge, Kolhapur. The learned District Judge, after hearing both parties, adjudicated the appeal on merits and came to the conclusion that the findings recorded by the lower Court

are just, legal and proper and, therefore, the appeal came to be dismissed. Hence the present petition.

4. At the outset, it may be noted that plaintiffs have averred that the defendant owned 1200 sq.ft. property out of C.T.S. No. 255 and had constructed a house thereon. Defendant had constructed building admeasuring 800 to 900 sq.ft. in that area. It was further averred that the defendant also was having flat admeasuring 300 sq.ft. at C.T.S. No. 2305/2 and also have other property in Kolhapur and, therefore, he had no need of the suit premises. In this regard, the evidence on record was sufficient to show that the elder son of the defendant was in service of S.T. Department and his second son Ramesh was in college and the third son Ranjit was in service of Kolhapur Corporation and his daughter is married. In fact, the defendant had admitted in his written statement that his sons have constructed premises over the plot which was allotted to him by the Corporation. According to the petitioner/defendant, four rooms have been constructed over the plot admeasuring 1200 sq.ft. in C.T.S. No. 255. Further it was not denied by the defendant that the plot was allotted to him by the Corporation on lease of 99 years. Petitioner tried to make out the case that

the construction was made by his sons and it was sought to be argued that he has no concern with his sons and daughter, but this fact is falsified by the admissions given by the defendant himself in his cross-examination. In other words, it is not in dispute that the family is joint family and sons are not separated at all. It is the case of the petitioner that he has gifted two rooms from house to his daughter. This fact also falsifies the case of the petitioner that he has no concern with the construction which has been done over the plot which is allotted to him by the Corporation.

Moreover, it is apparent from the record that the defendant is having sufficient income and his sons are residing there separately from him. They have acquired separate properties. He has gifted two rooms of that construction to married daughter and the fact remains that he is rich person and can construct building over the plot allotted by the Corporation. This aspect is sufficient to set aside the contentions embodied under Sec. 13(1)(l) which contemplates any kind of acquisition by any tenant.

The learned counsel for the respondents sought to put reliance on the ruling of the learned Single Judge of

this Court in the case of **Mande D'penha & ors. v/s Sapal Farmroze Printers, reported in 2003 (1) Mh.L.J. 24**, wherein, after taking survey of the judgments of the Apex Court, the Court came to the conclusion that merely because the tenant has parted with possession of the premises which had become available to him either by way of allotment or any other mode provided by the Act, that would not defeat the landlord of his right to recover possession of the demised premises from his tenant; and the provisions can still be pressed into service inspite of the fact that on the date of institution of the proceedings tenant was not in possession of those premises. The Apex Court in the case of **Mohini Badhwar v/s Raghunandan Saran Ashok Saran, reported in (1989) 3 SCC 72,** has also taken a view that the tenant was required to part with possession of the premises which he had acquired on account of legal obligation and still the Apex Court was of the view that it would not extricate the tenant from the rigours of the provisions under Sec. 31(1)(l) of the Act.

5. In view of this position, I have no doubt whatsoever that the reasoning adopted and the findings recorded by both the Courts below are just, legal and proper and, therefore, those would brook no interference.

The decree passed by the Courts below is founded on the evidence available on record and, therefore, it would brook no interference.

In the result, the petition stands dismissed with no order as to costs.

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